

North Somerset Council

REPORT TO THE PUBLIC RIGHTS OF WAY SUB-COMMITTEE

DATE OF MEETING: 23 NOVEMBER 2021

SUBJECT OF REPORT: MOD 34 – BLACKBERRY LANE, SECRETARY OF STATE ORDER DECISION

TOWN OR PARISH: WESTON IN GORDANO

OFFICER/MEMBER PRESENTING: ELAINE BOWMAN

KEY DECISION: NO

REASON: THIS PROPOSAL IS OUTSIDE THE COUNCIL'S KEY DECISION CRITERIA

RECOMMENDATIONS

That the Report be noted.

1. SUMMARY OF REPORT

This report is to inform the Committee that following a Virtual Inquiry on 22nd June 2021 North Somerset Council (“the Council”) received the Planning Inspectorate’s decision on 26th August 2021 to confirm the Order. The Committee is reminded that at its meeting on 15th November 2017, it was determined that the Committee support the confirmation of the Order when forwarded to the Secretary of State for determination.

2. POLICY

The maintenance of the Definitive Map should be considered as part of the management of the public right of way network and so contributes to the corporate plan “A Thriving and Sustainable Place” (a great place for people to live, work and visit) and “An Open and Enabling Organisation” (collaborate with partners to deliver the best outcomes).

3. DETAILS

North Somerset Council’s Public Rights of Way Sub Committee considered this application on 15th November 2017, whilst the application requested that these routes should be recorded as Byways Open to All Traffic, when investigated, it was felt that the evidence only supported one route and that the route A-B-C-D should be recorded as a Public Bridleway. The Committee formally resolved that a Definitive Map Modification Order should be made for the claimed route A-B-C-D as a Bridleway due to sufficient evidence having been submitted in support.

The effect of this request would be to amend the Definitive Map and Statement for the area.

The route claimed commences at the junction of Blackberry Lane and Valley Road, Point A, and proceeds along an unadopted track, known as Blackberry Lane and proceeds in a southerly direction for a distance of approximately 504 metres to a junction with Footpath LA 18/5, Point B. The route then continues in a south-westerly direction along Footpath LA18/5 for a distance of 106 metres to Point C, then continues to the south to Hill Lane ending at the junction of the B3124 (Point D) for a further 170 metres. Therefore making the total length of this route 770 metres.

On 6th April 2018 Definitive Map Modification Order No 3 2018 was made to upgrade Footpath LA18/5 and part of Footpath LA18/4 to a Bridleway. Following the consultation of that Order, the Council received four representations, three of which were objections. Following the statutory procedure, the Order was sent to the Secretary of State to determine the Order on 17th October 2019.

Due to circumstances around Covid Restrictions the decision was made by the Planning Inspectorate to hold a Virtual Inquiry. That inquiry took place on 22nd June 2021. As resolved by this Committee Officers supported the confirmation of the Bridleway Order and undertook this stance at this Inquiry.

On the 26th August 2021, North Somerset Council received the decision made by the Inspector appointed by the Secretary of State following the Public Inquiry. That Inspector's decision was that the Order should be confirmed. Details of the Inspector's Decision can be found in **Appendix 2** of this report.

4. CONSULTATION

The requirements of Paragraph 11 (4) of Schedule 15 of the Wildlife and Countryside Act 1981 state as soon as practicable after a decision to confirm an order, the authority shall give notice of the decision by advertisement and serving a copy of it on any person on whom notices were required to be served under paragraph 3 (2)(b) or 4 of Schedule 15 of the Act. Statutory objectors, the applicant and any supporters or interested parties were provided a copy of the decision letter by the Planning Inspectorate.

5. FINANCIAL IMPLICATIONS

This report is for informative purposes only. There will be no further financial implications on this matter.

Costs

The cost of advertising the confirmation of this Order will be met from existing Revenue Budgets.

Funding

Existing Revenue Budgets

6. LEGAL POWERS AND IMPLICATIONS

Section 53 of the Wildlife and Countryside Act 1981. The Wildlife and Countryside Act 1981 requires that applications which are submitted for changes to the Definitive Map and Statement are determined by the authority as soon as is reasonably possible, within 12

months of receipt. Failure will result in appeals being lodged and possible directions being issued by the Secretary of State.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

Improvements or additional routes added to the Public Rights of Way Network encourage sustainable travel by enabling the public to walk, cycle or ride a horse across our District reducing carbon emissions and improving our Environmental footprint.

8. RISK MANAGEMENT

As a Public Right of Way North Somerset Council have a responsibility to ensure that this route is kept open and available for users. No further action is required for the Committee.

9. EQUALITY IMPLICATIONS

No - All rights of way are available for the population as a whole to use and enjoy irrespective of gender, ethnic background or ability and are free at point of use.

10. CORPORATE IMPLICATIONS

Any changes to the network will be reflected on the GIS system which forms the basis of the relevant corporate records.

11. OPTIONS CONSIDERED

As this report is for information only, there are no further options for the Committee to consider.

AUTHOR

Lucy Roca
Access Officer DMMO – Ext 7539

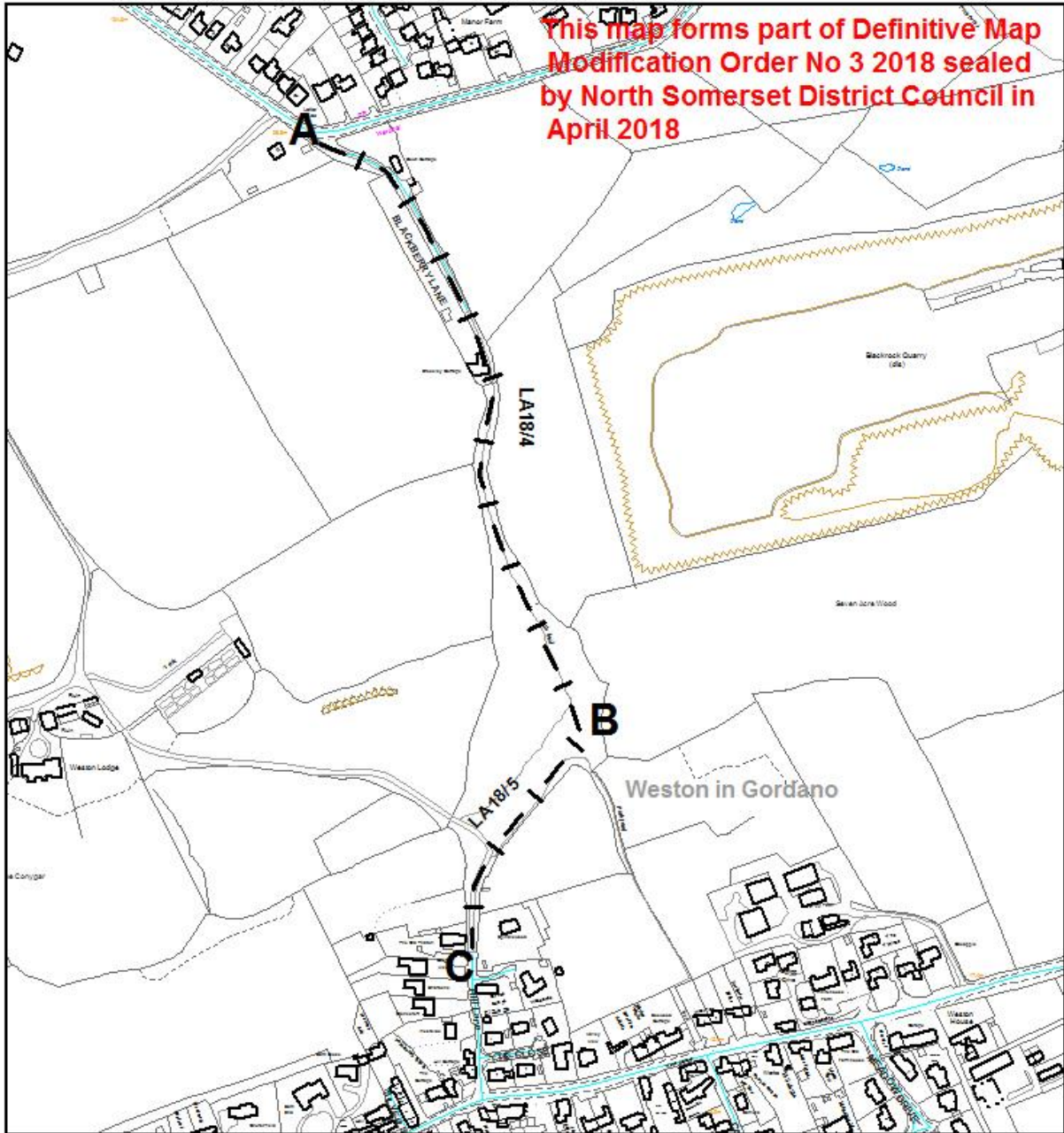
APPENDICES

Appendix 1 – Location Plan EB/MOD 20

Appendix 2 – Inspector’s Decision dated 12th December 2019

BACKGROUND PAPERS


File Ref Mod 20



Wildlife & Countryside Act 1981 - Section 53 North Somerset District Council
Upgrade of Footpath LA18/5 and part of Footpath LA18/4 to Bridleway
Definitive Map Modification Order No. 3 2018


 North Somerset COUNCIL
 Development & Environment
 Public Rights of Way
 Streets and Open Spaces
 North Somerset Council
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 Weston-super-Mare
 BS23 1UJ
 Tel: 01934 888 802



Scale 1:4000 
 Date 5 April 2018
 Grid Ref. ST4474
 Map No.
 EB/Mod 34
 Bridleway A-B-C
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Order Decision

Inquiry held on 22 June 2021

Site visit made on 1 June 2021

by Alan Beckett BA MSc MIPROW

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 26 August 2021

Order Ref: ROW/3239569

- This Order is made under Section 53 (2) (b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the North Somerset District Council (Upgrade of Footpath LA 18/5 and part of Footpath LA 18/4 to Bridleway Blackberry Lane Weston-in-Gordano) Definitive Map and Statement Modification Order No.3 2018.
- The Order is dated 6 April 2018 and proposes to modify the Definitive Map and Statement for the area by upgrading footpath LA 18/5 and part of footpath LA 18/4 to bridleway as shown in the Order plan and described in the Order Schedule.
- There were 3 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The restrictions imposed in relation to public gatherings arising from the response to the Covid-19 pandemic meant that it was not possible to hold an in-person public inquiry into the Order. In order to progress the matter without significant delay, a decision was taken that the Order would be determined by means of an inquiry held virtually.
2. I therefore held the inquiry on 22 June 2021 with the aid of Microsoft Teams technology. I am extremely grateful to all parties involved for engaging with this alternative arrangement during difficult times.
3. In advance of the inquiry, I made an unaccompanied site inspection of footpath LA 18/4 and that part of footpath LA 18/5 at issue along with Middle Hill Common through which the footpaths pass and the immediate surroundings. I commenced my inspection on Hill Lane, travelling south to north to Valley Road before undertaking a return journey. At the close of the inquiry, none of the parties requested that I make a further visit to the site.
4. On the morning of the inquiry, Miss Susan Taylor attended wishing to make a case for the Order route to be recorded as a Byway Open to All Traffic ('BOAT'). Prior to the opening of the inquiry, Miss Taylor had not participated in the Order process in any way; no objection, statement of case or proof of evidence as to the case she wished to make had been submitted in advance. Concerns were expressed by other parties that an adjournment would be necessary to consider any new or additional evidence which was sought to be introduced. After a discussion on this matter with the representative of the Axbridge Bridleways Association¹, Miss Taylor withdrew

¹ The successor organisation to the Woodspring Bridleways Association which was the original applicant for the Order

her request and the inquiry proceeded on the basis of the Council and the supporters' contention that the Order route ought to be recorded as a public bridleway.

The Main Issues

5. The Order has been made under section 53 (3) (c) (ii) of the 1981 Act. Section 53(3) (c) (ii) provides that an order to modify the definitive map & statement ('DM&S') should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows that a highway of one description ought to be there shown as a highway of a different description.
6. An application to upgrade the Order route had been made in 2005 on behalf of the Woodspring Bridleways Association. In that application, it was contended that two routes should be added to the definitive map as BOATs. The application was supported by 34 user evidence forms ('UEFs') and two sworn affidavits. The majority of the UEFs are dated as having been completed in 1998. It is not known why there was a time lag between the evidence of use being gathered and its submission to the Council in support of a formal application.
7. It was the Council's case that the evidence of use which had been submitted did not provide support for the routes claimed being BOATs. In the Council's view the user evidence strongly supported the Order route as being a public bridleway but was insufficient to support the claim that a second bridleway on a slightly different route had come into being through long use. The supporters also contended that the available documentary evidence demonstrated that the Order route was historically subject to public equestrian rights, and that relatively recent use demonstrated by the UEFs was the continued exercise of a long-established public right.
8. The evidence in this case therefore comprises recent use by the public on horseback and historic documentary sources. Where it is claimed that a public right of way has come into existence through a period of long use, the provisions of section 31 of the Highways Act 1980 are relevant. The tests to be considered under this section are:
 - (a) the date on which the claimed equestrian right to use the route was brought into question;
 - (b) whether the route was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into question; and
 - (c) whether there is sufficient evidence that there was during this 20-year period no intention to dedicate the claimed bridleway.
9. In relation to the documentary evidence adduced Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as is appropriate, before determining whether or not a way has been dedicated as a highway.

Reasons

Documentary evidence

10. The earliest document adduced is the 1782 Day & Masters map of Somerset. The map shows the existence of a route from what is now the B3214 Clevedon Road running in a generally northerly then north westerly direction over Weston Downs to connect with what is now Down Road. The depiction of this route appears to be somewhat schematic. At its southern end, the route shown accurately depicts what is now Hill Lane and the access to Weston Lodge. Beyond the spur to Weston Lodge the route shown by Day and Masters diverges from that shown in the Order map. Whilst the supporters submitted a copy of the Day and Masters map with the Order route points A, B and C superimposed, the point which is identified as A (that is, the junction of Blackberry Lane with Valley Road) appears to be much further to the west on the Day and Masters map in comparison to A on the Order map.
11. The route over the downs is shown by means of two parallel pecked lines; this is shown in the map key to represent "*Open Roads over Commons or Downs*". As the route is shown crossing the unenclosed downs, the precise alignment of the route being depicted is likely to have changed over time. Whilst I concur with the objectors that the Day and Masters map does not show the Order route (or only shows part of it), the map demonstrates that a means of crossing the downs from Weston in Gordano via a route which commenced on Hill Lane was in existence when the map was created. However, the map is not of sufficient accuracy to demonstrate that the route being depicted is the Order route.
12. Limited extracts from the Weston in Gordano Inclosure Award were submitted². From the extracts received it appears that the award was made under the local Act of 1807 which incorporated the provisions of the 1801 General Inclosure Act. The Commissioners did not consider that it was necessary to set out and appoint any public roads as part of the Award and appear to have restricted themselves to the setting out of private carriage roads. One such private carriage road was named as '*Middle Hill Road*' which ran from a place called Down Gate (at a point approximately 60 metres south east of point A on the Order plan) to the awarded Down Road.
13. The Order route is described in the Award as "*One other plot piece or parcel of land commonly called or known by the name of Middle Hill and Down Lane containing by admeasurement three acres three roods and thirty four perches and numbered 137 and 141 on the said annexed plan bounded on the eastwards and westwards by old enclosures which said last numbered allotment is declared to be subject to the right of way leading from Weston to Weston Down before mentioned*".
14. Although not mentioned in the extract of the Award submitted, the award plan shows '*Middle Hill*' as being the property of J N Sanders. '*Middle Hill*' is marked as such across the centre of the common with '*Down Lane*' being the narrower strip of land leading north from the body of the common to Middle Hill Lane at Down Gate.
15. I have scrutinised the extracts of the inclosure award submitted and I can find no reference to the '*right of way leading from Weston to Weston Down before mentioned*' which allotment 141 was subject to. The objectors suggest that this refers to a right of access to plot 141 from the village of Weston over land allotted to J N Sanders. This may well be the case, but in the absence of an extract from the Award which specifies the nature of such a right of way, it is not possible to determine conclusively whether the right of way being described was public or private.

² The award was made pursuant to the Act for inclosing lands in the parishes of Northweston in Portishead and Weston in Gordano of 1807

16. The Commissioners stipulated that the private roads were set out for the benefit of the owners and occupiers of the lands allotted "*with free liberty for them and every of them and all and every other person and persons who shall or may have occasion to travel there to go pass and repass in through upon and over the same to and from such their divisions and allotments plots and parcels of land either on foot or horseback or with horses cattle carts and carriages loaded or unloaded at their and every of their free will and pleasure.....*".
17. The supporters submit that the description given by the Commissioners of who was entitled to use the private roads set out under the award indicates the award of a public right of way on horseback. It is the supporters' view that the description given is virtually identical to that found in the award considered by Lieven J in the recent case of *Craggs v SSEFRA [2020 EWHC 3346 (Admin)]* ('Craggs') where it was held that it would have been within the Commissioners' powers to set out a private road whilst giving access to those roads to the public on foot and on horseback.
18. Although there is a similarity in the description given in the Weston Award to that found in the Shipham and Winscombe Award considered in *Craggs*, to my mind there is a significant difference in that in the Weston Award reference is made to the private roads as providing access for those having occasion to travel "*to and from such their divisions and allotments plots and parcels of land*". Whilst the class of persons who could use the private roads appears to be unfettered, any use of the private roads was for the specific purpose of accessing the various allotments served by those roads and was not for general use.
19. There is no such restriction found in the Shipham and Winscombe Award which described the private roads set out as being for the use of the owners and occupiers of the allotments "*and all and every other person and persons whomsoever having any occasion whatsoever to go travel pass and repass through upon and over the same roads and ways and every or any other or either of them on foot or on horseback with horses cattle carts and other carriages loaded or unloaded at their and every of their free will and pleasure*".
20. Accordingly, I concur with the Council and the objectors that the Weston Inclosure Award does not provide evidence of the Order route being set out as a public bridleway.
21. The 1811 Ordnance Survey map shows a means of access to Weston Lodge from Hill Lane and a route from Weston Lodge to Down Road but does not show the Order route as an identifiable feature on the ground. An enclosed route which corresponds with the modern Valley Road is shown on the map. This map was published two years after the Weston Inclosure Award was made and suggests that the route used to cross the downs was via Valley Road and not via the Order route.
22. In contrast to the OS map of 1811, Greenwood's map of 1822 shows an enclosed route running from Hill Lane to Valley Road on the alignment of the Order route; the 'bulge' of Middle Hill Common is shown on the map as being just north of the access track to Weston Lodge. Greenwood described two types of road in the key to his map; turnpike roads and cross roads; the Order route is depicted by Greenwood as a 'cross road'. The supporters submit that a 'cross road' has been held by the Courts in a number of cases to indicate a road between two other roads which the public have access to without the payment of a toll. It is contended that the depiction of the Order route by Greenwood in this way indicated that it was considered to be part of the ordinary highway network of the area.
23. The depiction of the Order route in this manner by Greenwood would, at first glance, support that contention. However, the Greenwood map (along with the Day

and Masters map) is just one piece of evidence and is at odds with both the Ordnance Survey map of 1811 (which does not show the Order route) and the earlier Inclosure Award evidence which does not provide evidence of the route being public.

24. An extract from the Weston in Gordano Tithe map and apportionment of 1840 shows Middle Hill and Down Lane leading to Valley Road numbered as plot 40. The apportionment records plot 40 as being cultivated as 'pasture'. There is no indication of a path or track over Middle Hill whereas an unenclosed track is shown running from Hill Lane to Weston Lodge.
25. The Ordnance Survey six-inch to one-mile map of 1884 shows the northern end of the order route annotated as '*Blackberry Lane*' and shows a peck line route running from Hill Lane over Middle Hill on a route which corresponds in part to the order route; this path is annotated 'F.P.'. The southern end of Blackberry Lane is marked on the map by a line or bar which extends across the full width of the lane at the southern boundary of what is now Brockley Cottage and suggests that a gate was located at this point at the time of the production of the map.
26. The map produced in 1930 as part of the handover from district councils to county councils of maintenance responsibilities for public roads shows that Hill Lane was considered to be a maintainable public road as far as point C on the Order plan; no part of the Order route was considered to be part of the maintainable public road network.
27. The survey of public rights of way undertaken under the provisions of the National Parks and Access to the Countryside Act 1949 describes path 4 as starting on Clevedon Road and running over Weston Common and Blackberry Lane to Valley Road. Path 5 is recorded as commencing on Hill Lane and running over Weston Common to join path 4. There were no structures such as gates or stiles recorded on either route. No objections were made to the inclusion of paths 4 and 5 as footpaths at the draft or provisional map stages.

Conclusions on the documentary evidence

28. Whilst the Day and Masters and Greenwood maps both show a route over the downs from Hill Lane in a manner which suggests that the route may have been capable of carrying public traffic on foot and on horseback, these maps are at odds with the 1809 inclosure evidence, the 1811 Ordnance Survey map and the tithe evidence, none of which indicate that the route was considered to carry a public right of way. The remaining late nineteenth century and mid-twentieth century documents are silent as to the status of the Order route, other than the documents relating to the survey of public rights of way under the 1949 Act where the claimed status of the route as a public footpath was not disputed.
29. Taken collectively, the documentary evidence shows the existence of a means of access between Hill Lane and Valley Road has existed since at least 1809. The Day and Masters map suggests that making a journey over the downs from Hill Lane to Down Road would have been possible as early as 1782 although the alignment of that route is uncertain. Although it appears that access to Middle Hill would have been possible from both Hill Lane and Blackberry Lane, none of the documents adduced demonstrate, on a balance of probabilities, that the Order route has historically been subject to public bridleway rights.
30. The Order route is currently recorded as a public footpath. If a public bridleway has come into existence over the Order route, such rights will have arisen through a period of recent use by the public on horseback. It is to the user evidence that I now turn.

User evidence – section 31 of the 1980 Act

The date on which the right of the public to use the claimed bridleway was brought into question

31. As noted in paragraph 6 above, the application to upgrade footpaths LA 18/4 and LA 18/5 was made in 2005 and was supported by a number of UEFs which had been completed in 1998. The Council submits that no evidence has been put forward to suggest that use of the Order route on horseback had been challenged or questioned by the then owners of the land crossed by the footpaths or any adjoining landowners.
32. The Council's records include a note of a telephone conversation dated 9 September 1998 where the caller (a Mr Hawken) noted that he had '*heard of moves to stop horseriders*' from using footpath LA 18/4. Mr Hawken also appears to have had concerns about restrictions being placed on grazing rights and access to fields. The note is brief and contains little detail other than what is set out above.
33. The Council submits that in the absence of any action which called use into question, it would generally rely upon the date of the application being submitted as the date before which the 20-year period of use would be calculated. In this case however, the Council considers that the record of the telephone conversation and the UEFs being completed in 1998 demonstrates that some incident or event had taken place in that year which had challenged public use.
34. That there had been some change in or around 1998 is given some support in the correspondence received by the Council as part of its pre-Order consultation. One correspondent noted that "*the left-hand route you indicate C – F – E³ only came into use approximately 18 years ago, when the original footpath became irretrievably damaged by horseriders to the extent that horses could no longer use it. As a gesture of goodwill, an alternative route was offered by the village, across the middle of the common, route CFE*". This letter dates from September 2017 and refers to events 18 years earlier in approximately 1999.
35. Pulling these limited threads together it would seem that use by horseriders had resulted in damage to the surface of the footpath. The suggestion that an alternative route could be used (perhaps on a permissive basis) may have been the event which prompted the completion of the UEFs and the telephone call from Mr Hawken. In the absence of any evidence of any other event which brought use of the claimed bridleway into question, I conclude that the events of 1998 did so. It follows that the relevant 20-year period of use for the purposes of section 31 (2) of the 1980 Act is 1978 to 1998.

Whether the claimed bridleway was used by the public as of right and without interruption for a period of not less than 20 years ending on the date the public's right to do so was brought into question

36. A total of 34 UEFs were received in support of the application. The Council produced an analysis of this evidence and says that in relation to the Order route, 26 of the respondents indicated that they had used it with 17 of the forms relating to use of the route on horseback. The earliest use is claimed to have occurred in the 1920s, but the bulk of the use on which the Council relies occurred between 1969 and 1991 when 12 respondents claimed use of the route.
37. None of those who completed a UEF appeared at the inquiry and given the passage of time, it is likely that some individuals are no longer alive, and some may have

³ C – F – E refers to a route shown on the application plan which was not taken forward by the Council

moved out of the area. In addition to the Council's analysis, I have also scrutinised the UEFs to establish the extent and duration of the claimed use and to assess the quality of the evidence submitted.

38. A number of the forms have to be discounted in relation to a claim for a public bridleway as the respondents only provide evidence of use of the route on foot. As the route is already recorded as a public footpath, such evidence is of little direct value although one respondent notes that the route had been used by horseriders. Three respondents provided evidence of driving cattle across Middle Hill from fields either side of the common in addition to claiming to have used the path on horseback. These respondents may have held grazing rights on the common; without further clarification as to the extent and nature of the use claimed, it is difficult to separate out what may have been the exercise of a private right from use on horseback as a member of the public.
39. Other respondents provided evidence of use on horseback for periods of time which were earlier than the period 1978 – 1998. Whilst such use has to be discounted in relation to the 20-year period under consideration, it provides supporting evidence of the reputation of the route as having been open for equestrian use during an earlier period. Two other respondents provided evidence of use with a pony trap; one indicates use of a 'zig-zag' route to overcome the gradient of Middle Hill, the other that the trap was used to arrive at the common and the pony would be ridden bareback around it.
40. Setting this evidence aside, I find that there are 16 UEFs which provide evidence of use of the Order route on horseback during the 20-year period prior to 1998. Of these, 11 respondents claim to have used the Order route throughout the relevant 20-year period, with the remaining 5 respondents claiming use for between 6 and 19 years. Frequency of use ranged from daily to weekly. One respondent described his use as part of a circular route from Weston returning via Valley Road.
41. Four of the respondents stated that the route used had changed and contend that the route C-F-E had been the route originally used. These statements conflict with the observations of a local resident noted above who states that the alternative route came into use in or around 1999; the majority of the user respondents indicate from the plans attached to the UEFs that it had been the Order route which they had used during their period of use.
42. None of those who completed a UEF reported the existence of gates or stiles or other impediments to passage having been found along the Order route. One of those respondents who only claimed use on foot recalled that a gate had once stood at the Valley Road end of Blackberry Lane but was no longer present. None of those using the route on horseback recalled any challenge to their use; those who claimed to have driven along Blackberry Lane in a pony trap recalled being challenged in 1993 by the then occupier of Brockley Cottage. Whilst this may indicate the approach taken by the occupier to use of the lane by vehicles, there is no evidence of similar challenges being made to those using the lane on horseback.
43. As none of those who had submitted evidence of claimed use appeared at the inquiry, it was not possible to examine further the claimed use. The objectors questioned the veracity of the statements on the grounds that the gradient of Middle Hill was such that it would be impractical for a horse to be ridden uphill from Hill Lane and dangerous for one to be ridden down it from Blackberry Lane.
44. Whilst Middle Hill is steep, the gradient does not appear to have been an impediment to equestrian use of the Order route in the recent past. In addition to the UEFs a number of statements from people resident in the area had been received by the Council as part of its pre-Order consultation exercise; many of

these statements refer to equestrian use. A previous owner of Down Cottage noted that between 1997 and 2017 horseriders had occasionally been seen up and down the footpath. Another correspondent recalled meeting horses on the narrow section between points C and B on the order plan; another contended that it was use of the footpath by equestrians which exposed the underlying rocks on the path, which had resulted in further erosion. Others noted that equestrian use had ceased around 2010/11 when the owners of Weston Lodge had created a new gravel track to access their property from the south. These additional recent statements support and reflect the evidence of use found in the UEFs.

45. Mr Quas' evidence was that footpath 18/5 was overgrown when he moved to Weston in 1971. His written evidence was that the footpath had been cleared in around 1980, but his oral evidence was that this may have occurred in the late 1970s. Waymark posts with horseshoes painted on them had also been installed on footpath 18/5 and 18/4 which remained in place until around 2010. Mr Quas had no recollection of a gate being present on Blackberry Lane, although it was acknowledged that a gate was currently on site.
46. It is not disputed that there is a gate at the southern end of Blackberry Lane just to the south of Brockley Cottage, nor is it disputed that there had been a gate at that point at some time in the past; the 1884 Ordnance Survey map considered above indicates the existence of such a structure and the old posts from which a gate would have hung are present on site.
47. Only one of the UEFs recalled the existence of a gate on Blackberry Lane which was said to have been removed. The gate was said to be at the Valley Road end, not near Brockley Cottage; no dates for the existence of this gate were given. None of those who completed a UEF recalled the existence of a gate or other path furniture at any other location on the Order route.
48. If the gate near Brockley Cottage was either not present or propped open during the 20-year period under consideration, it is unlikely to have registered as a feature of the route with users. An open gate or one that is not present will not present an obstruction to users nor will it interrupt any use being made of the route. There is no evidence that use of the Order route by horseriders has been interrupted.
49. Similarly, no evidence has been presented to demonstrate that the claimed use occurred as a result of permission being sought or granted. There is some evidence of the existence of a gate to the south of Brockley Cottage although there is some doubt as to whether the gate was present during the 20-year period under consideration. In any event, the presence (or absence) of the gate does not appear to have prevented use of the route by equestrians; the claimed use was not by force. There is no evidence which suggests that the claimed use was undertaken by stealth or in secret; many respondents recall seeing use on horseback.

Conclusions on the user evidence

50. There is a body of evidence which demonstrates uninterrupted public use of the Order route as of right throughout the 20-year period under consideration. I conclude that the evidence adduced is sufficient to raise a presumption that the Order route has been dedicated as a public bridleway.

Whether there is sufficient evidence that there was during the 20-year period under consideration no intention to dedicate the claimed bridleway

51. For a lack of intention to dedicate to be demonstrated a landowner is required to have taken action to make the public aware that he, she, or they had no intention of dedicating a public right of way.

52. The most common way in which the landowner's intentions could have been brought to public attention would have been by the erection on the path of a notice or notices denying the existence of a right of way, or to place a suitably worded notice in the local newspaper. There is no evidence of such actions having been taken by the relevant landowners at the time.
53. The current owners of the two properties on Blackberry Lane were not in possession during the period 1978 to 1998 and I acknowledge the difficulty they find themselves in in seeking to respond to a matter which had its origins a considerable time prior to the purchase of their properties and where those who were the owners of the property during the relevant period have long since departed.
54. Whilst I have some sympathy for the position the current owners of property along Blackberry Lane find themselves in, the provisions of section 31 of the 1980 Act are quite clear; evidence sufficient to demonstrate of a lack of intention to dedicate public bridleway rights has to be derived from the actions of those who were in possession of the land at the relevant time. No evidence has been submitted which is contemporaneous with the 20-year period under consideration which shows that overt attempts were made to prevent public use of the Order route on horseback or to inform users during that period that the way was not a public bridleway.

Other matters

55. A number of the objectors refer to the impact of equestrian use of the footpaths may have upon the flora and fauna of Middle Hill Common. Reference has also been made in some of the consultation responses to the erosion of the soil and exposure of the underlying rock on the line of footpath 18/5 as a result of previous use of the path by equestrians. Whilst I acknowledge these concerns, the process under section 53 of the 1981 Act is to determine whether a public bridleway has come into existence through long use. Whilst environmental matters are a legitimate concern for the objectors to raise, the impact the claimed bridleway may have upon current or future land use is not a matter which I can take into account and does not provide a reason for not confirming the Order.
56. The objectors are also concerned that their current personal use of their property will be adversely affected; horseriders would be able to see into the upper floor rooms of their houses due to the height of the rider and the relative height of the house to the slope of Blackberry Lane. The garden of Down Cottage is in two parts and is set behind walls and fences either side of the lane; the occupiers are concerned that everyday management of the property will be made more difficult if equestrian use of the land occurs. It is felt that such use would contravene the right to peaceful enjoyment of the property.
57. Although the matters raised by the objectors relating to the impact upon personal property are matters relating to Article 8 and/or Article 1 of the First Protocol of the Convention on Human Rights, these provisions are not engaged by section 53 of the 1981 Act where the only matter to be determined is whether public rights exist in law.
58. The Order seeks to record a public right of way which already exists under the law. There is no consideration of the effect of the public right of way on individuals and their human rights, and confirmation of the Order would not result in a determination of any private, human or civil rights. It is not possible to interpret section 53 of the 1981 Act in such a way that it is compatible with the Convention rights. A decision to confirm an Order made under section 53 of the 1981 Act is lawful under section 6(2) of the Human Rights Act 1998.

59. It was suggested that the correct line of the bridleway was from Valley Road towards Weston Lodge Farm and then via Weston Lodge to Hill Lane. A neighbour of some of the objectors who has lived on Valley Road all her life had used the Order route to walk to school but had known this alternative route to be described as 'the bridleway'. It may be that there has at some time been a means of access on the route described (and it may be this route which was shown on the Day & Masters map), but the evidence of use submitted in this case is of use of the Order route as a means of travel between Hill Lane and Valley Road, and not some other route.

Conclusions on statutory dedication

60. I conclude that the evidence of use of the Order route on horseback by the public, as of right and without interruption throughout the period between 1978 and 1998, is sufficient to raise a presumption of dedication of the route as a public bridleway.

61. There is no evidence of challenges having been made to those using the route on horseback and insufficient evidence of the landowners during that period demonstrating to the public there was no intention to dedicate a public bridleway. It follows that I also conclude that the presumption raised by the user evidence has not been rebutted.

62. It follows that I am satisfied that the evidence before me is sufficient to show, on a balance of probabilities, that a public bridleway subsists over the Order route.

Overall Conclusion

63. Having regard to these and all other matters raised during the public inquiry and in the written representations, I conclude that the Order should be confirmed.

Formal Decision

64. I confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For North Somerset District Council:

Elaine Bowman Principal Access Officer

For Axbridge Bridleway Association:

Ann Gawthorpe

Objectors:

Charles Dowden

Rebecca Hall

Neville Hall

Simon Maughan

Ian Holding

Interested Party:

David Quas